

1 demonstrate that the claims have been addressed by that court or by the Nevada Supreme Court as
2 required to exhaust.

3 Pursuant to Rule 4 of the Rules Governing Section 2254 Cases, the Court's preliminary
4 review indicates that the two problems with the original petition as it is presented to this Court remain
5 unresolved. First, petitioner is not entitled to bring his petition pursuant to 28 U.S.C. § 2254 because
6 he is not in custody pursuant to the judgment of a state court. Here, petitioner has apparently not been
7 convicted of a crime. Rather, he has been arrested, extradited, and detained to stand trial.

8 Second, the claims presented remain unexhausted, even if a petition has been filed in the
9 state district court. *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 489-91, 93 S.Ct.
10 1123 (1973); *Carden v. State of Mont.*, 626 F.2d 82, 83 (9th Cir. 1980). To exhaust a claim, petitioner
11 must have "fairly presented" that specific claim to the Supreme Court of Nevada. *See Picard v.*
12 *Conner*, 404 U.S. 270, 275-76 (1971); *Schwartzmiller v. Gardner*, 752 F.2d 1341, 1344 (9th Cir. 1984).
13 This action and the amended petition is premature and must be dismissed.

14 Because the petition must be dismissed, the other pending motions (ECF Nos. 11 and 12)
15 shall be denied as moot.

16 **IT IS THEREFORE ORDERED** that the Amended Petition (ECF No. 19) is
17 **DISMISSED WITHOUT PREJUDICE.**

18 **IT IS FURTHER ORDERED** all pending motions (ECF Nos. 11 and 12) are **DENIED**
19 **AS MOOT.**

20 The Clerk shall enter judgment accordingly.

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22 Dated this 2nd day of January, 2013.

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26 UNITED STATES DISTRICT JUDGE